

Claims 1-39 were pending in the application. Claims 1-39 were rejected by the Examiner in the Office Action of October 19, 2001. Claims 2-20, 22-28, and 35-38 are cancelled by this amendment. Claims 1, 21, 29-34, and 39 are pending in this amendment.

Claim Rejections – 35 U.S.C. § 102 (b)

The Examiner indicated that Claims 1, 9, 18-20, 21-22, 27, 33, and 38 – 39 were rejected under 35 U.S.C. § 102 (b) as being anticipated by Mayes, U.S. Patent No. 6,100,526 (“Mayes ‘526”). Claims 1, 21, 33, and 39 have been amended by the Amendment herewith. Support for the changes to these claims as amended is found in the specification of the present application on page 22, lines 25-30. Claims 9, 18-20, 22, 27, and 38 have been cancelled by the Amendment herewith.

It is the Applicant’s position that the rejections as to Claims 1, 21, 33, and 39 are now moot in light of the amendment. Amended Claims 1 and 39 include the limitation the monochromator is selected from the group consisting of a stationary interferometer, a stationary Hadamard mask, an acoustic-optic tunable filter (AOTF), and an electro-optic modulator. These monochromators are not taught or suggested in Mayes ‘526.

Amended Claims 21 and 33 include the limitation that the step of isolating is selected from the group consisting of stationary interferometry, stationary Hadamard mask processes, use of an acoustic-optic tunable filter (AOTF), and use of an electro-optic modulator. These steps are not taught or suggested in Mayes ‘526. Claims 1, 21, 33, and 39 have been amended by the Amendment herewith. Applicant requests the rejection under 35 U.S.C. §102 (b) be withdrawn.

Claim Rejections – 35 U.S.C. § 103

Claims 2-8, 10-14, 17, 23-26, 29-32, and 34 – 37 were rejected under 35 U.S.C. § 103 over Mayes ‘526 in view of Sadjadi, U.S. Patent No. 5,480,354 (“Sadjadi ‘354”). Claims 2 – 8, 10 – 14, 23-26, and 35– 37 are cancelled by the Amendment herewith. Claims 15, 16, and 28 were rejected under 35 U.S.C. § 103 over Mayes ‘056 in view of Tobler et al. U.S. Patent No. 5,406,084 (“Tobler ‘084”). Claims 15, 16, and 28 have been canceled by the Amendment herewith.

By the amendment herein, the limitations of Claim 17 have been incorporated into Claim 1, and Claim 17 has been subsequently canceled. It is the Applicant's position that the limitations of newly amended Claim one are not taught or suggested by the combination of Mayes '526 and Sadjadi '354. Neither of these references teach stationary interferometers (or use thereof), stationary Hadamard masks (or use thereof), acoustic-optic tunable filters (or use thereof), or electro-optic modulators (or use thereof).

Furthermore, Applicant believes that Sadjadi '354 teaches away from the Applicant's claimed invention. Sadjadi '354 teaches the use of a camera and filters, so that for obtaining the moisture content of grain, only one wavelength of is received by the camera at any one time. The following is disclosed in Sadjadi '354 at Column 3, lines 51-58

To obtain information on the moisture content of grain, a filter is placed over light source 21 so that light of only a wavelength L1 is projected onto grain 24. The camera 20 receives the image of wavelength L1, and a processor 17 converts the optical image into a light-reflectance value. Next, a second filter is placed over light source 22 so that only light of a wavelength L2 is projected onto grain 24. [Emphasis supplied]

Because the invention of Sadjadi '354 discloses a camera that receives only one wavelength of light at a time, Sadjadi '354 teaches away from the use of any type of monochromator being capable of isolating narrow portions of the near infrared spectrum as in Claim 1. Thus, Applicant asserts that one of skill in the art would have no motivation or suggestion to combine Sadjadi with Mayes '526. Applicant requests the rejections under 35 U.S.C. §103 be withdrawn.

Applicant requests that the rejection of Claims 29-32 under 35 U.S.C. §103 be withdrawn as the Examiner had not established a *prima facie* case of obviousness. To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 281, 180 U.S.P.Q. 580 (CCPA 1974); MPEP § 2143.03. The base claim for Claims 29-32 is Claim 21, which is a method claim and each of Claims 29-32 is a method claim. The Examiner in his rejection of Claims 29-32 stated the following:

Mayes ('526) in combination with Sadjadi ('354) discloses the claimed invention except for utilizing the constituents for agricultural hybrid development, breeding programs, soil analysis, or non-destructive analysis of nutraceuticals. It would have been obvious to one having ordinary skill in the art at the time of [sic] the invention was made to use of these analysis systems since it was known in the art that the analysis would provide better information for harvesting. [Emphasis supplied]

Each of the underlined terms corresponds to a limitation (*i.e.*, step of the method) provided, respectively, in the methods in Claims 29-32. Thus, in the rejection, the Examiner did not, apparently, consider these limitations as part of the present invention. Applicant respectfully points out that these limitations are claimed in the application. The Applicant asserts that because these limitations are missing from the combination of Mayes '526 and Sadjadi '354, as the Examiner stated ("except for utilizing the constituents for agricultural hybrid development, breeding programs, soil analysis, or non-destructive analysis of nutraceuticals"), these references above alone or in combination do not teach or suggest the present invention as claimed in Claims 29-32. Consequently, the Examiner has not established a *prima facie* case of obviousness. Therefore, the Applicant respectfully requests that the 35 U.S.C. § 103 rejection to these claims be withdrawn.

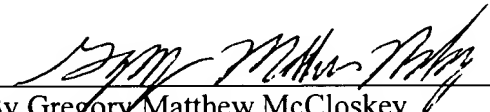
With respect to the 35 U.S.C. § 103 rejection to Claim 34, the Examiner stated that "Mayes ('526) substantially teaches the claimed invention except that it does not show a housing in [sic] mounted on a mobile carrier." Applicant believes that newly amended Claim 33 is allowable for the reasons discussed above. Therefore, since Claim 34 depends from an allowable independent claim, Claim 34 is also allowable. Applicant requests that the 35 U.S.C. §103 rejection of Claim 34 be withdrawn.

Conclusion

For the foregoing reasons, Applicant believes the claims remaining in the application are in condition for allowance. Applicant, therefore, respectfully requests that the Examiner withdraw the rejections and allow all remaining claims in the application. If the Examiner believes, after this Amendment, that the application is not in condition for allowance, the Examiner is requested to call the undersigned at the number below.

Dated: 1-17-02

Sincerely,


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